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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 FARBOD AMINI, a single man,

12 Plaintiff,

13 vs.

14 BANK OF AMERICA CORPORATION,
15 a Delaware corporation; BANK OF
16 AMERICA, N.A., a national bank
17 association; BANK OF AMERICA
18 HOME LOANS; BAC HOME LOANS
19 SERVICING, LP, a limited partnership;
20 LANDSAFE APPRAISAL SERVICES,
21 INC., a corporation; and HOME
22 RETENTION SERVICES, INC., a
corporation,

23 Defendants.

11 NO.

12 COMPLAINT FOR DAMAGES
13 AND INJUNCTIVE RELIEF

14 JURY TRIAL DEMANDED

25 COMES NOW Plaintiff Farbod Amini (“Amini”), and for his claims alleges as follows:

26 **PARTIES**

27 1. Plaintiff Amini (“Mr. Amini” or “Plaintiff”) is a single man and is the owner of
28 real property located at 97 Utsalady Road, Camano Island, Island County, Washington (the “real
29 property”).

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2. Defendant Bank of America Corporation is a Delaware corporation that does business in this judicial district.

3. Defendant Bank of America, N.A., is a national banking association that does business in this judicial district.

4. Defendant Bank of America Home Loans is, upon information and belief, a division of Bank of America Corporation, and does business in this judicial district.

5. Defendant BAC Home Loans Servicing, LP is a subsidiary of Bank of America Corporation and does business in this judicial district.

6. Defendant LandSafe Appraisal Services, Inc. ("LandSafe") is a corporation and, upon information and belief, is a subsidiary of Bank of America Corporation. Landsafe Appraisal Services, Inc. does business in this judicial district.

7. Defendant Home Retention Services, Inc. is a corporation and, upon information and belief, is a subsidiary of Bank of America Corporation. Landsafe Appraisal Services, Inc. does business in this judicial district.

JURISDICTION AND VENUE

8. This court has subject matter jurisdiction to resolve the claims asserted in this case, pursuant to diversity jurisdiction under 28 U.S.C. § 1332, and because Plaintiff is asserting claims under 12 U.S.C. § 2605, the Real Estate Settlement Procedures Act, and under 15 U.S.C. § 1692, *et seq.*, the Fair Debt Collection Practices Act.

9. Venue is proper in this court because the events and omissions giving rise to the claims asserted herein occurred in this judicial district.

FACTS

10. In 2005, Mr. Amini learned that the real property was for sale, and began efforts to
3 purchase the property. He applied for a purchase loan through Countrywide Bank, N.A.
4 (“Countrywide”), but was informed that he did not have adequate credit to qualify for a purchase
5 loan for the real property. The Countrywide loan representatives with whom Mr. Amini dealt
6 encouraged him to locate another person with adequate credit to act as the named purchaser for
7 the real property. The Countrywide loan representatives suggested that another person could
8 serve as Mr. Amini’s nominee for the purchase; while the title to the property would be in another
9 person’s name, Mr. Amini could make the required loan payments, and title could be transferred
10 to Mr. Amini in the future, after he established a sufficient credit history.
11
12
13

15 11. In reliance upon the encouragement and suggestions of Countrywide's loan
16 representatives, Mr. Amini located another person, Kazem Noven, to acquire title to the real
17 property. Mr. Noven qualified with Countrywide for the purchase loan for the real property, and
18 Countrywide made a purchase loan for the real property memorialized by Mr. Noven's signature
19 on one or more Promissory Notes in favor of Countrywide. At Mr. Amini's request, title to the
20 real property was transferred to Mr. Noven by deed recorded with the Island County Auditor on or
21 about March 3, 2005; Countrywide's purchase loan for the real property was secured by one or
22 more deeds of trust against the real property signed by Mr. Noven.
23
24

26 12. Although the title to the real property was in the name of Mr. Noven, Mr. Amini
27 and Mr. Noven considered Mr. Amini to be the owner of the real property. Mr. Noven instructed
28 and authorized Countrywide to deal with Mr. Amini on all issues pertaining to the real property,
29
30 and Mr. Amini made all payments required under the Promissory Note(s) memorializing the



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1 purchase loan for the real property.

2 13. Upon information and belief, Defendant LandSafe performed the appraisal for the
 3 2005 transfer of title, and the value indicated by the appraisal justified and was commensurate
 4 with the purchase price and purchase loan for the real property. Mr. Amini believed the real
 5 property had a value commensurate with the appraisal, the purchase price, and the purchase loan
 6 amount. In authorizing Mr. Noven to complete the transaction that resulted in the transfer of title
 7 to the real property to Mr. Noven, Mr. Amini relied on the appraisal completed by LandSafe. Mr.
 8 Amini would not have authorized Mr. Noven to complete the transaction had the value of the real
 9 property indicated by the appraisal not been consistent with the purchase price and purchase loan
 10 amount.
 11

12 14. Mr. Noven conveyed a one-half interest in the real property to Mr. Amini by deed
 13 recorded with the Island County Auditor on or about December 23, 2005. Mr. Amini continued
 14 making all payments on Countrywide's purchase loan for the real property and was the primary
 15 person to communicate with Countrywide pertaining to the real property and Countrywide's
 16 purchase loan for it.
 17

18 15. By the summer of 2006, Mr. Amini had established sufficient credit to qualify for a
 19 loan for the real property from Countrywide. Accordingly, Mr. Noven transferred title to the
 20 remaining one-half interest in the real property to Mr. Amini by deed recorded on August 10,
 21 2006 with the Island County Auditor. Contemporaneous with his acquisition of 100% of title to
 22 the real property, Mr. Amini refinanced the purchase loan for the real property and executed a
 23 Promissory Note in favor of Countrywide, dated August 9, 2006, in the amount of \$ 504,000.
 24 This Promissory Note was secured by a Deed of Trust on the real property executed by Mr. Amini
 25

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1 on or about August 9, 2006.

2 16. For the August 9, 2006 transaction, Countrywide retained LandSafe to perform
 3 another appraisal on the real property. The value of the real property indicated by the appraisal
 4 was no less than \$630,000. Mr. Amini would not have completed the refinance transaction had
 5 the appraisal value not been consistent or more than the new loan amount.
 6

7 17. When Mr. Amini completed the August 9, 2006 refinance transaction with
 8 Countrywide, Mr. Amini also obtained a line of credit from Countrywide, evidenced by a second
 9 Promissory Note in the amount of \$30,000 and secured by a Deed of Trust on the real property.
 10 Mr. Amini's decision to take out a \$30,000 line of credit with Countrywide, secured by the real
 11 property, was also based on the value indicated by the appraisal completed by LandSafe. Mr.
 12 Amini drew against the line of credit.
 13

14 18. On June 25, 2008, Mr. Amini learned that the septic tank for sewage for the real
 15 property was not functioning properly, and that the drainfield was not operable. Mr. Amini
 16 learned this information when he received an invoice from the company that he had hired to pump
 17 his septic tank.
 18

19 19. Effective July 1, 2008, Defendant Bank of America Corporation acquired
 20 Countrywide and its assets, including, upon information and belief, the August 9, 2006
 21 Promissory Note in favor of Countrywide executed by Mr. Amini, and the obligation due on Mr.
 22 Amini's line of credit.
 23

24 20. After Mr. Amini learned of the problem with his drainfield and septic tank, he
 25 began investigating possible remedies for the problems. Mr. Amini also communicated several
 26 times in 2008 and 2009 about the problem to Countrywide or its successor, Bank of America
 27

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1 Corporation, or an affiliate of Bank of America Corporation. Countrywide or Bank of America
 2 Corporation or an affiliate of Bank of America Corporation requested Mr. Amini to obtain
 3 information about and estimates for the repair work necessary to fix the problems with the
 4 wastewater disposal and treatment at the real property. Mr. Amini obtained the necessary
 5 information and estimates and transmitted the information and written estimates to Countrywide,
 6 Bank of America Corporation, or an affiliate of Bank of America Corporation.
 7

9 21. Mr. Amini learned that it would cost several hundred thousand dollars to remedy
 10 the problems with the septic tank and drainfield at the real property, and that without the
 11 necessary repairs, the real property could not be inhabited or used for any purpose. Accordingly,
 12 without the necessary repairs to the septic tank and drainfield problems, the real property is
 13 essentially worthless.

16 22. Countrywide or Bank of America Corporation or an affiliate of Bank of America
 17 Corporation requested that Mr. Amini make an insurance claim concerning the septic tank and
 18 drainfield problems to his real property insurer, Allstate Insurance. Mr. Amini did so, but Allstate
 19 Insurance determined that Mr. Amini's insurance policy did not cover the risks associated with the
 20 problems. Mr. Amini communicated Allstate Insurance's denial of coverage to Countrywide or
 21 Bank of America Corporation or an affiliate of Bank of America Corporation.
 22

24 23. Following Mr. Amini's receipt of the information about the problems with his
 25 drainfield and septic tank, Mr. Amini stopped making payments on the loan evidenced by the
 26 August 9, 2006 Promissory Note, and on the line of credit loan.

28 24. On April 27, 2009, Countrywide converted to a national bank and merged with and
 29 into Bank of America, N.A. Upon information and belief, upon said merger, Mr. Amini's August
 30



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1 9, 2006 Promissory Note for \$ 504,000 and the Promissory Note evidencing the line of credit was
2 assigned to Defendant Bank of America, N.A. or Defendant Bank of America Corporation. At
3 that time, or thereafter, the servicing responsibilities for Mr. Amini's Promissory Note and line of
4 credit obligation were assigned to BAC Home Loans Servicing, LP.
5

6 25. On April 8, 2010, the Island County Department of Public Health ordered Mr.
7 Amini to vacate the home on the real property, and leave it vacant, until the an approved sewage
8 disposal system is installed on the property. The home and real property remain vacant to this
9 day.
10

12 26. On September 14, 2010; October 10, 2010; and November 18, 2010, through his
13 legal counsel, Mr. Amini made a "Qualified Written Request" to Bank of America Home Loans
14 Servicing, LP, under Section 6 of the Real Estate Settlement Procedures Act for copies of the
15 August 9, 2006 \$504,000 Promissory Note, and related documents. Bank of America Home
16 Loans Servicing, LP refused to provide any documents or information in response to these
17 requests.
18

20 27. On September 23, 2010 and November 18, 2010, through his legal counsel, Mr.
21 Amini made a "Qualified Written Request" to Bank of America Home Loans Servicing, LP, under
22 Section 6 of the Real Estate Settlement Procedures Act for copies of the Promissory Note for the
23 \$30,000 line of credit and related documents. Bank of America Home Loans Servicing, LP
24 refused to provide any documents or information in response to these requests.
25

27 28. Since Mr. Amini stopped making payments on his two Promissory Notes, BAC
28 Home Loans Servicing, LP and Home Retention Services, Inc. have engaged in debt collection
29 and have acted as "debt collectors" as defined by the Fair Debt Collection Practices Act with
30



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1 respect to these two Promissory Notes. At all times relevant, Home Retention Services, Inc. has
 2 been acting on its own behalf and on behalf of and as agent for BAC Home Loans Servicing, LP;
 3 Bank of America, N.A.; and Bank of America Corporation. At all times relevant, BAC Home
 4 Loans Servicing, LP has been acting on its own behalf and on behalf of and as agent for Bank of
 5 America, N.A. and Bank of America Corporation. During the course of their actions as debt
 6 collectors, BAC Home Loans Servicing, LP and/or Home Retention Services, Inc. communicated
 7 by telephone with Mr. Amini before 8:00 a.m. or after 9:00 p.m. on several occasions, including
 8 without limitation on August 25, 2010. In addition, BAC Home Loans Servicing, LP and/or
 9 Home Retention Services, Inc. have frequently telephoned Mr. Armini more than one time per
 10 day, and several times per week.
 11

12 29. On August 10, 2010, Mr. Amini informed BAC Home Loans Servicing, LP, that
 13 Guy W. Beckett and Berry & Beckett, PLLP, are his attorneys with respect to the debts allegedly
 14 due represented by the two Promissory Notes. Mr. Amini has informed BAC Home Loans
 15 Servicing, LP, of such legal representation several times since August 10, 2010, including without
 16 limitation on November 4, 2010, in a telephone conversation with its employee "Jennie N.",
 17 Employee No. 5740. Despite advising BAC Home Loans Servicing, LP of several times that Guy
 18 W. Beckett and Berry & Beckett, PLLP, are his attorneys with respect to the debts allegedly due
 19 represented by the two Promissory Notes, BAC Home Loans Servicing, LP and Home Retention
 20 Services, Inc. have continued to attempt to communicate with Mr. Amini concerning the alleged
 21 debts.
 22

23 30. On or about January 24, 2011, Mr. Amini and his legal counsel, Guy W. Beckett of
 24 Berry & Beckett, PLLP, informed Home Retention Services, Inc. in a telephone conference call
 25

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1 that Guy W. Beckett and Berry & Beckett, PLLP, are Mr. Amini's attorneys with respect to the
 2 debts allegedly due represented by the two Promissory Notes. Upon information and belief, Mr.
 3 Amini had advised Home Retention Services, Inc. of such legal representation prior to January 24,
 4 2011. Despite advising Home Retention Services, Inc. that Guy W. Beckett and Berry & Beckett,
 5 PLLP, are his attorneys with respect to the debts allegedly due represented by the two Promissory
 6 Notes., Home Retention Services, Inc. and BAC Home Loans Servicing, LP have continued to
 7 attempt to communicate with Mr. Amini concerning the alleged debts.

10

11 **FIRST CAUSE OF ACTION:**
 12 **RESPA VIOLATIONS**

13 31. By refusing to provide the documents relating to the two Promissory Notes in
 14 response to the Qualified Written Requests referred to above in Paragraphs 28 and 30, Defendants
 15 BAC Home Loans Servicing, LP violated the Real Estate Settlement and Procedures Act, 12
 16 U.S.C. § 2605(e).

17 32. As a result of BAC Home Loans Servicing, LP's violation of 12 U.S.C. § 2605(e),
 18 Mr. Amini suffered damages for which he is entitled to recover judgment against BAC Home
 19 Loans Servicing, LP.

20 33. BAC Home Loans Servicing, LP's refusal to comply with several Qualified
 21 Written Requests made on behalf of Mr. Amini constituted a pattern or practice of noncompliance
 22 with the requirements of 12 U.S.C. § 2605(e). Accordingly, pursuant to the provisions of 12
 23 U.S.C. § 2605(f)(1)(B), Mr. Amini is entitled to recover statutory damages of \$1,000 against BAC
 24 Home Loans Servicing, LP.

25 34. Pursuant to the provisions of 12 U.S.C. § 2605(f)(3), Mr. Amini is entitled to
 26 recover judgment against BAC Home Loans Servicing, LP for his reasonable attorney's fees,

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1 costs, and expenses incurred for and in this action.

2

3 **SECOND CAUSE OF ACTION:**
 4 **NEGLIGENCE ASSOCIATED WITH APPRAISALS**

5 35. LandSafe appraised the real property as a residence with a septic and waste
 6 disposal system approved for a one-bedroom, one bathroom residence. An appraiser exercising
 7 the proper standard of care would have determined whether the real property had an approved
 8 septic and waste disposal system. However, the septic and waste disposal system for the real
 9 property has never been approved by the Island County Department of Health, and LandSafe's
 10 appraiser did not inquire into that information when he made his appraisals. Had the appraiser
 11 exercised reasonable care and determined that the septic tank and drainfield were not approved
 12 and were not functioning properly when the appraisals were made, the value indicated in the
 13 appraisal would not have been commensurate with the purchase price, and Mr. Amini would not
 14 have completed the transactions.

15 36. In making the appraisal used for the August 9, 2006 transaction, LandSafe used
 16 several allegedly comparable properties and sales. The information used and applied for the
 17 comparable properties, however, was not used and applied in the manner an appraiser exercising
 18 the proper standard of care should have used and applied it. LandSafe made the following
 19 mistakes pertaining to the allegedly comparable properties and sales:

20 a. With respect to Comparable No. 2, LandSafe's appraisal asserted that the most
 21 recent sale was for \$525,000. However, the actual sale date and price was February 3, 2006 for
 22 \$415,052.98. An appraiser exercising the proper standard of care would not have used an
 23 incorrect sales price. Also, the property was not waterfront property as the subject property is, and
 24 therefore was not a proper comparable. An appraiser exercising the proper standard of care would

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1 not have used a non-waterfront property as a comparable sale for a waterfront property. The use
2 of the incorrect sale price and non-waterfront property as a comparable property affected the
3 accuracy of the appraisal.

4
5 b. With respect to Comparable No. 3, LandSafe's appraisal asserted that the most
6 recent sale was for \$925,000. However, the actual sale date and price was June 28, 2006 for
7 \$775,000. An appraiser exercising the proper standard of care would not have used an incorrect
8 sales price, and the use of the incorrect sale price affected the accuracy of the appraisal.
9
10

11 c. With respect to Comparable No. 4, the property was a lot larger than the subject
12 property. However, rather than reducing the comparable value due to its larger size, LandSafe's
13 appraisal applied a \$75,000 increase to the subject property's value. Due to the smaller lot size,
14 the appraisal should have shown a reduced value for the subject property. An appraiser exercising
15 the proper standard of care would not have increased the value of the subject property based on a
16 greater sale price for a larger comparable sale. In addition, the property was not a proper
17 comparable property to the subject real property, because the subject real property lot was 3,000
18 square feet; the size of the allegedly comparable lot was approximately 21,780 square feet.
19
20

21 d. With respect to Comparable No. 5, LandSafe's appraisal asserted that the most
22 recent sale was for \$579,000. However, the actual sale price was August 18, 2006 for \$572,500.
23 An appraiser exercising the proper standard of care would not have used an incorrect sales price,
24 and the use of the incorrect sale price affected the accuracy of the appraisal. Also, LandSafe's
25 appraisal increased the subject property's value by \$25,000 because Comparable No. 5 was in
26 "Camano City." There is no such place as "Camano City." Upon information and belief, an
27 appraiser exercising the proper standard of care would not have increased the value of the subject
28
29
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1 real property based on the fact that the Comparable sale was purportedly located in "Camano
2 City."
3

4 37. Due to the several problems with the appraisal identified in Paragraph 36,
5 LandSafe's appraisal for the August 9, 2006 transaction was inaccurate and not a proper
6 indication of the true value of the subject real property. LandSafe was negligent in completing the
7 appraisal.
8

9 38. Had Mr. Amini known the true value of the real property and that it was not
10 approved by the Island County Department of Health for a waste disposal and septic system, Mr.
11 Amini would not have completed the August 9, 2006 transaction. LandSafe's negligence
12 damaged Mr. Amini in an amount to be proven at trial, and Mr. Amini is entitled to recover
13 judgment against LandSafe for such negligence.
14
15

16 39. When it completed its appraisals, LandSafe was acting as Countrywide's agent.
17 Bank of America, N.A or Bank of America Corporation is the successor in interest to
18 Countrywide and is therefore liable for Countrywide's agent's negligence. Mr. Amini is entitled
19 to recover judgment against Bank of America, N.A. or Bank of America Corporation in the same
20 amount as the judgment he recovers against LandSafe.
21
22

23 **THIRD CAUSE OF ACTION:**
24 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**

25 40. At all times relevant, BAC Home Loans Services, LP and Home Retention
26 Services, Inc. were debt collectors as defined in the Fair Debt Collection Practices Act, 15 U.S.C.
27 § 1692, *et seq.* In their collection actions against Mr. Amini, BAC Home Loans Services, LP and
28 Home Retention Services, Inc. violated the Fair Debt Collection Practices Act in the following
29 respects:
30



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1 a. When they communicated with Mr. Amini before 8:00 a.m. and after 9:00 a.m., as
2 described above in Paragraph 28, they violated 15 U.S.C. § 1692c(a)(1).
3

4 b. Because they knew that Mr. Amini was represented by legal counsel with respect
5 to the debts, as described above in Paragraphs 29 and 30, they violated 15 U.S.C. § 1692c(a)(2).
6

7 c. When they frequently telephoned Mr. Amini as described above in Paragraph 28,
8 they engaged in conduct, the natural consequence of which was to harass, oppress, or abuse a
9 person in connection with the collection of a debt, in violation of 15 U.S.C. § 1692d.
10

11 d. BAC Home Loans Services, LP forwarded several communications to Mr. Amini
12 without disclosing that it was attempting to collect a debt and that any information obtained would
13 be used for that purpose, or that BAC Home Loans Services, LP is a debt collector, in violation of
14 15 U.S.C. § 1692e(11).
15

16 e. BAC Home Loans Services, LP forwarded several communications to Mr. Amini
17 without disclosing any of the information required to be disclosed by 15 U.S.C. § 1692g(a).
18

19 41. Mr. Amini is entitled to recover judgment against BAC Home Loans Services, LP,
20 for his damages sustained as a result of the violations of the Fair Debt Collection Practices Act
21 described above in Paragraph 40, in an amount to be proven at trial. In addition, Mr. Amini is
22 entitled to recover statutory damages of \$1,000 for each violation as provided by 15 U.S.C. §
23 1692k(2)(A), and reasonable attorney's fees, costs, and expenses incurred for and in this action,
24 pursuant to 15 U.S.C. § 1692k(3).
25

27 **FOURTH CAUSE OF ACTION:**
28 **VIOLATIONS OF WASHINGTON'S COLLECTION AGENCY ACT**
29 **AND CONSUMER PROTECTION ACT**

30 42. Home Retention Services, Inc. is a "collection agency" as defined by Washington's



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¹ Collection Agency Act, RCW Chapter 19.16.

3 43. Home Retention Services, Inc. has made numerous and repeated telephone calls to
4 Mr. Amini for the purpose of demanding payment on the alleged debts memorialized by the
5 Promissory Notes, for which calls the charges are payable by Mr. Amini, in violation of RCW
6
7 19.16.250(16).

8 44. Home Retention Services, Inc. has communicated in writing with Mr. Amini on at
9 least two occasions concerning the alleged debts memorialized by the Promissory Notes without
10 including all of the information in such communications required by RCW 19.16.250(8).
11

12 45. Home Retention Services, Inc. has communicated with Mr. Amini in a manner so
13 as to harass, intimidate, threaten or embarrass him, by directing telephone calls to him more than
14 three times in a single week, in violation of RCW 19.16.250(12)(a).
15

16 46. Pursuant to RCW 19.16.440, any violations of RCW 19.16.250 are per se unfair
17 acts or practices or unfair methods of competition in the conduct of trade or commerce for the
18 purpose of the application of Washington's Consumer Protection Act, RCW Chapter 19.86.

20 Accordingly, Home Retention Services, Inc. has violated the Consumer Protection Act and Mr.
21
22 Amini is entitled to recover judgment for the damages resulting therefrom, trebled, together with
23 reasonable attorney's fees and costs and expenses of the suit, all pursuant to RCW 19.86.090.

47. Mr. Amini is also entitled to obtain an injunction against Home Retention Services,
Inc. for its unlawful actions identified above in Paragraphs 43 through 45 pursuant to RCW
19.86.090

JURY DEMAND

30 | 48. Plaintiff requests a trial by jury of the claims asserted herein.

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1 WHEREFORE, Plaintiff prays for judgment as follows:

2 1. For judgment against Bank of America Corporation; Bank of America, N.A.;

3 LandSafe Appraisal Services, Inc.; BAC Home Loans Servicing, LP; and Home Retention
4 Services, Inc., in amounts to be proven at trial.

5 2. For judgment against Home Retention Services, Inc. for treble damages for each of
6 its violations of Washington's Consumer Protection Act, up to \$25,000 per violation.

7 3. For an injunction prohibiting Home Retention Services, Inc. from conducting its
8 collection activities in violation of RCW 19.16.250 as described herein.

9 4. For judgment for reasonable attorney's fees and costs of suit against BAC Home
10 Loans Servicing, LP pursuant to 12 U.S.C. § 2605(f)(3) and 15 U.S.C. § 1692k(3), and against
11 Home Retention Services, Inc. pursuant to 15 U.S.C. § 1692k(3) and RCW 19.86.090.

12 5. For judgment for statutory costs.

13 6. For pre-judgment interest on all liquidated sums awarded at the highest allowable
14 rate, and post-judgment interest on the entire judgment at the highest allowable rate.

15 7. For permission to amend his pleadings to conform to the proof presented at trial;

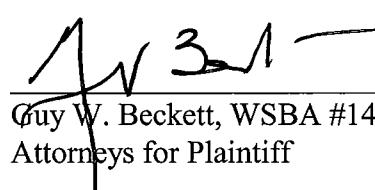
16 and

17 8. For such other and further relief as the Court deems just and equitable.

18 DATED this 10th day of June, 2011.

19 BERRY & BECKETT, PLLP

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Guy W. Beckett, WSBA #14939
Attorneys for Plaintiff

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